IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 27871 of 2005(R)

PETITIONER:

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1. BHARATH SANCHAR NIGAM LTD.,
   REPRESENTED BY CHEIF ACCOUNTS OFFICER
   (CASH ACCOUNTS) O/O. P.G.M.T., BSNL BHAVAN,
   KALATHIPARAMBU ROAD, ERNAKULAM.

2. ASSISTANT GENERAL MANAGER
   (BUILDING PLANNING), OFFICE OF THE
   PRINCIPAL GENERAL MANAGER, BSNL,
   BSNL BHAVAN, KALATHIPARAMBU ROAD,
   ERNAKULAM.

BY ADV. SRI.C.S.RAMANATHAN, SC, BSNL

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   CHIEF SECRETARY, SECRETARIAT,
   TRIVANDRUM.

2. SECRETARY, LOCAL ADMINISTRATION
   SECRETARIAT, TRIVANDRUM.

3. PRINCIPAL SECRETARY, DEPARTMENT
   OF REVENUE, SECRETARIAT, TRIVANDRUM.

4. TAHASILDAR, KANAYANNUR TALUK,
   ERNAKULAM.

5. SECRETARY, GCDA, ERNAKULAM.

6. BRANCH MANAGER, STATE BANK OF INDIA,
   ERNAKULAM.

R1 TO R4 BY G.P. SRI.T.B.RAMAN
BY ADV. SRI.P.R.RAMACHANDRA MENON, SC,GCDA FOR R5

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: COPY OF OFFICE MEMORANDUM DT.30.9.2000 TRANSFERRING THE ASSETS AND LIABILITIES OF DEPT. OF TELE.

P2: COPY OF LETTER DT.6.1.03 OF R5.

P3: COPY OF LETTER DT.22.1.2003 ADDRESSED TO R5.

P4: COPY OF LETTER DT.10.6.2003 OF R5.

P5: COPY OF LETTER DT.27.8.2003 ADDRESSED TO R5.

P6: .DO. DT.18.9.2003 .DO.

P7: .DO. DT.22.10.2003 ADDRESSED TO DISTRICT COLLECTOR, ERNAKULAM.

P8: COPY OF LETTER DT.26.12.2003 OF R5.

P9: COPY OF LETTER DT.5.3.2004 ADDRESSED TO R3.

P10: COPY OF ORDER DT.4.9.2004 OF R2.

P11: COPY OF LETTER DT.7.12.2004 ADDRESSED TO R2.

P12: COPY OF LETTER DT.3.3.2005 PROHIBITORY ORDER ISSUED BY R4.

P13: COPY OF LETTER DT.11.3.2005 ADDRESSED TO R6.

P14: COPY OF ORDER DT.14.3.2005 OF R6.

P15: COPY OF REPRESENTATION DT.15.3.2005 SUBMITTED TO THE MINISTER FOR REVENUE KERALA STATE.

P16: COPY OF CONSEQUENTIAL ORDER DT.9.6.2005 ISSUED BY R3.

P17: COPY OF ORDER DT.14.3.2005 OF R2.

P18: COPY OF REPRESENTATION DT.24.5.2005 ADDRESSED TO R1.

P19: COPY OF ORDER DT.14.7.2005 ISSUED BY R2.

TRUE COPY

PA TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.27871 of 2005

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Dated this the 29th day of November, 2007.

JUDGMENT

This W.P. is filed by BSNL, a Government of India undertaking challenging Ext.P10 order issued by the Government of Kerala declining to waive interest payable by the petitioner to the Greater Cochin Development Authority for belated payment of additional cost of land acquired and given by GCDA for establishment of Telephone Exchange in the Cochin city. The acquisition of land under the Land Acquisition Act was made by the GCDA at the request of the Department of Telecom, Government of India for setting up of Telephone Exchange in Cochin city. The acquired land was conveyed by GCDA to the Telecom Department on condition that additional compensation awarded to land owners in Land Acquisition proceedings by civil courts will be payable by the Telecom Department. However, later Government of India formed the petitioner-company and transferred the Telecom services with the entire assets of the Telecom Department to the petitioner-company. Accordingly, the petitioner is bound to discharge the liabilities of the Telecom department, the undertaking of which is taken over by it. Therefore, there is no dispute with regard to

petitioner's liability to pay additional compensation to GCDA for the land conveyed by GCDA to the Telecom Department. The GCDA made claim of additional compensation of Rs.81,21,000/- in the year 2000. However, BSNL did not make payment in time and delayed it for three years for getting approvals, clearance etc., for making the payment. On account of the delay in payment of the additional compensation, GCDA demanded interest of around Rs.43 lakhs from the petitioner. When petitioner approached the Government against demand of interest, Government granted instalment facility to clear the arrears. However, probably without noticing the instalment facility granted to the petitioner, the recovery authority namely, the Tahsildar recovered the entire amount in Garnishee proceedings as is evident from Ext.P14. Pursuant to demand by the Tahsildar, the petitioner's Bank made payment of Rs.50,94,822/- towards interest payable and claimed by the recovery authority for GCDA. The difference between the interest originally demanded and the amount actually recovered could be only penal rates i.e. interest on interest, collection charges etc., details of which are not available on record. However, the issue cropped up only when the Government declined petitioner's request for waiver of interest for belated payment of compensation. Since interest is already recovered, the petitioner's present claim is for refund of the excess

amount recovered. Even though petitioner's case for waiver was recommended by the GCDA, Government vide Ext.P10 refused to grant approval of GCDA'S recommendation for waiver of interest. The W.P. is filed for quashing Ext.P10 order issued by the Government on 4.9.2004 and for a direction to the Government to approve GCDA's recommendation for waiver of interest and to grant consequential relief to the petitioner in the form of refund of collected interest. I heard counsel appearing for the petitioner, Standing Counsel appearing for GCDA and Government Pleader appearing for the State.

2. The case of the petitioners is that Government had no authority to go beyond the recommendation of the GCDA to waive the interest, but to grant approval of it. According to them, when the beneficiary organisation is willing to make sacrifices in favour of the petitioners in the form of waiver of interest, the Government should have approved the same. Counsel for the petitioners stated that delay in payment of additional compensation was not deliberate and was on account of the time taken for approvals, clearances etc., from higher authorities of the company. Counsel also pointed out that BSNL being a Central Government Company has it's own constraints and payment of huge amount could not be made on demand but could be done only after complying with all the formalities. Counsel for

the GCDA on the other hand contended that recommendation for waiver of interest was made taking into account the fact that BSNL is a Government of India undertaking. Government Pleader on the other hand submitted that since Government is supplementing the funds of GCDA, it has the authority to overrule recommendation of the GCDA in regard to financial matters and it is only to protect the interest of the organisation Government declined to grant approval for waiver of interest. He has specifically referred to Ext.P10 and contended that reason for declining waiver of interest is that petitioner, though under control of the Government of India, is carrying on business and making good profits.

3. The dispute is between a Government of India concern engaged in Telecom services and a statutory body which is under the control of the State Government engaged in development of Cochin city. Therefore, both the agencies serve to a large extent public interest. The question, therefore, has to be considered with reference to the relative position of both the parties. Admittedly petitioner is a commercial concern engaged in Telecom services and is making steady profits for the last several years. On the other hand, GCDA is a fund-starved organisation which has not been able to take up new development projects and most of the work undertaken by it particularly, road development is left half-way through for shortage of

funds. Considering the relative financial position of the petitioners and GCDA, I have no doubt in my mind that there was no justification for the GCDA to make any financial sacrifice in favour of the petitioners. The additional compensation payable under the Land Acquisition Act under court orders is always with interest till date of payment. Therefore, GCDA has to necessarily pay interest to the land owners on the additional compensation payable by them under court orders. In fact GCDA collects additional compensation from the beneficiaries to whom land is conveyed and make payment to the land owners from whom such land is acquired. Therefore, the GCDA is only an intermediary in the transaction and if acquisition was made by the Government directly for Telecom Department or BSNL, the petitioner would have been liable to pay compensation and additional compensation with interest till date of payment to the land owners. Therefore, in the deal GCDA may be a net gainer because it would have paid or it is liable to pay similar interest to the land owners. In the circumstance, I feel the recommendation of GCDA to the Government to approve waiver of interest was obviously against it's own interest. The sympathy expressed by GCDA proves beyond doubt their ignorance about the business profits and financial position of the petitioner-company. The provision for Government approval for GCDA's decision is essentially in

the form of control on the financial transactions of the GCDA. Therefore, it is always open to the Government to decline approval to any financial proposal of the GCDA, if Government is of the view that such proposal adversely affects the interest of the organisation which in turn leads to loss to the Government. So long as the Government meets the financial deficiencies of GCDA, the Government can pass any order which helps to augment the resources of the organisation. It is to be noted that but for the intervention by the Government declining to approve waiver of interest, GCDA would have suffered loss which in turn is loss to the Government. The consideration that weighed with the Government in declining to waive interest is the steady profit earned by the petitioner-company. I feel the reason stated in Ext.P10 order is quite valid and tenable because the interest paid by the petitioner is only to compensate GCDA which is a statutory organisation engaged in development work for public benefit. In the circumstances, I uphold Ext.P10 in principle. However, I feel if the amount recovered from the petitioner includes penal rates, the same is liable to be refunded to them. Here again, since tax benefit would have been already obtained by the GCDA and they will be liable to pay tax on refunds, it is for the petitioner to decide whether the matter should be pursued or not. In the circumstances, W.P. is disposed of directing the GCDA to furnish the break-

up details of the amount recovered through revenue recovery proceedings for the BNSL to put up a claim for refund of penal charges i.e. amount recovered over the normal rate of interest charged by the GCDA, and if any such claim is made by BSNL, GCDA should grant refund of the excess recovered over the interest payable at the normal rate.

C.N.RAMACHANDRAN NAIR
Judge

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